

STATE OF NEW MEXICO  
HUMAN SERVICES DEPARTMENT  
GOVERNMENTAL SERVICES AGREEMENT

This Governmental Services Agreement (GSA) is made and entered into by and between the State of New Mexico Human Services Department, hereinafter referred to as the "HSD" or the "Agency", and Children, Youth and Families Department (CYFD), hereinafter referred to as the "Contractor" or "CYFD".

**IT IS AGREED BETWEEN THE PARTIES:**

**1. Scope of Work**

The Contractor shall perform all services detailed in Exhibit A, Scope of Work, attached to this Agreement, and incorporated herein by reference.

**2. Compensation**

A. The total amount payable to the Contractor under this Agreement shall not exceed two hundred thirty eight thousand two hundred ninety dollars (\$238,290). This amount is a maximum and not a guarantee that the work assigned to the CONTRACTOR under this GSA to be performed shall equal the amount stated herein. Payment to the Contractor is on a cost reimbursement basis.

HSD shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work compensation not to exceed seventy nine thousand four hundred thirty dollars (\$79,430) in FY14.

HSD shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work compensation not to exceed seventy nine thousand four hundred thirty dollars (\$79,430) in FY15.

HSD shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work compensation not to exceed seventy nine thousand four hundred thirty dollars (\$79,430) in FY16.

B. The HSD shall pay the Contractor in full payment for services satisfactorily performed an amount not to exceed two hundred thirty eight thousand two hundred ninety dollars (\$238,290), as set forth in Paragraph A. Payment is subject to availability of funds pursuant to the Appropriations Section set forth below and to any negotiations between the parties from year to year pursuant to Section 1, Scope of Work, and to approval by the HSD. All invoices MUST BE received by the HSD no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. The Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the HSD finds that the services are not acceptable, within

thirty days after the date of receipt of written notice from the Contractor that payment is requested, the HSD shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the HSD that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the HSD shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

**3. Term**

This GSA shall be effective July 1, 2013 and shall terminate June 30, 2016, (except for the requirement to produce a final quarterly report, which survives the contract and is to be delivered in accordance with the attached Scope of Work) unless amended, extended, or terminated pursuant to the terms of this GSA.

**4. Termination**

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this GSA, the HSD's sole liability upon such termination shall be to pay for acceptable work performed prior to the CYFD's receipt of the notice of termination, if the HSD is the terminating party, or the CYFD's sending of the notice of termination, if the CYFD is the terminating party; provided however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this GSA. The CYFD shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this GSA may be terminated immediately upon written notice to the CYFD if the CYFD becomes unable to perform the services contracted for, as determined by the HSD or if, during the term of this GSA, the CYFD or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CYFD's DEFAULT/BREACH OF THIS GSA.

B. Termination Management. Immediately upon receipt by either the HSD or the CYFD of notice of termination of this Agreement, the CYFD shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this GSA without written approval of the HSD; 2) comply with all directives issued by the HSD in the notice of termination as to the performance of work under this GSA; and 3) take such action as the HSD shall direct for the protection, preservation, retention or transfer of all property titled to the HSD and records generated under this GSA. Any non-expendable personal property or equipment provided to or purchased by the CYFD with contract funds shall become property of the HSD upon termination and shall be submitted to the HSD as soon as practical.

**5. Appropriations**

The terms of this GSA are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico and/or the federal grantor for the performance of

this GSA. If sufficient appropriations and authorization are not made, this GSA shall terminate immediately upon written notice being given by the HSD to the Contractor. The HSD's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the HSD proposes an amendment to the GSA to unilaterally reduce funding, the Contractor shall have the option to terminate the GSA or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**6. Assignment**

The Contractor shall not assign or transfer any interest in this GSA or assign any claims for money due or to become due under this GSA without the prior written approval of the HSD.

**7. Subcontracting**

The Contractor shall not subcontract any portion of the services to be performed under this GSA without the prior written approval of the HSD.

**8. Release**

Final payment of the amounts due under this GSA shall operate as a release of the HSD, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this GSA.

**9. Confidentiality**

A. Any confidential information, as defined in state and federal law, code, rules or regulations, regarding the HSD's Medicaid participants that is provided to, or developed by, the Contractor shall not be made available by the Contractor to any individual outside of the Contractor or any organization outside of the Contractor without the prior written approval of the HSD, unless the Medicaid participant has consented to its release, or unless the information is required by a court of competent jurisdiction, or other legal process.

B. The Contractor warrants that it will retain all confidential information belonging to the HSD's Medicaid participants, and will not disclose it to anyone without the explicit written permission of the HSD, unless the Medicaid participant has consented to its release, or unless the information is required by a court of competent jurisdiction, or other legal process. The Contractor recognizes that irreparable harm can be caused to the HSD and its participants by disclosure of confidential information concerning the HSD and its participants and, accordingly, the HSD may refuse or enjoin such disclosure. The Contractor will be solely responsible for any violations by the Contractor or its agents. The HSD will be solely responsible for any violations by the HSD or its agents. Any liability incurred in connection with this agreement is subject to the immunities and limitation of the Tort Claims Act.

C. The Contractor shall (1) notify the HSD promptly of any unauthorized possession, use, or knowledge of the HSD data, files or other confidential information; (2) promptly furnish to the HSD full details of the unauthorized possession, use or knowledge of the HSD data, files or other confidential information; and (3) assist the HSD in an investigation of the matter and take steps to prevent a recurrence.

D. This confidentially agreement shall be binding on the parties and their agents.

10. Amendment

A. This GSA shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the HSD proposes an amendment to the GSA to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the GSA, pursuant to the termination provisions contained herein, or to agree to the reduced funding.

11. Merger

This GSA incorporates all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written GSA. No prior GSA or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this GSA.

12. Records and Audit

A. The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the GSA's term and effect and retain them for a minimum period of five (5) years from the date of final payment under this GSA. The records shall be subject to inspection by the HSD, the Department of Finance and Administration and the State Auditor. The HSD shall have the right to audit billings both before and after payment. Payment under this GSA shall not foreclose the right of the HSD to recover excessive or illegal payments.

B. Contract for an independent A-133 audit at the Contractor's expense, as applicable. The Contractor shall ensure that the auditor is licensed to perform audits in the State of New Mexico and shall be selected by a competitive bid process. The Contractor shall enter into a written contract with the auditor specifying the scope of the audit, the auditor's responsibility, the date by which the audit is to be completed and the fee to be paid to the auditor for this service. Single audits shall comply with procedures specified by the HSD. The audit of the contract shall cover compliance with Federal Regulations and all financial transactions hereunder for the entire term of the GSA in accordance with procedures promulgated by OMB Circulars or by Federal program officials for the conduct and report of such audits. An official copy of the independent auditor's report shall be provided to the HSD and any other authorized entity as required by law within 15 days of receipt of the final audit report. The Contractor may request an extension to the deadline for submission of the audit report in writing to the HSD for good cause and the HSD reserves the right to approve or reject any such request. The HSD retains the right to contract for an independent financial and functional audit for funds and operations under this GSA at Contractor's expense if it determines that such an audit is warranted or desired.

C. Upon completion of the audit under the applicable federal and state statutes and regulations, the Contractor shall notify the HSD when the audit is available for review and provide online access to the HSD, or the Contractor shall provide the HSD with four (4) originals of the audit report. The HSD will retain two (2) and one (1) will be sent to the HSD/Office of the Inspector General and one (1) to the HSD/Administrative Services Division/Compliance Bureau.

D. Within thirty (30) days thereafter, or as otherwise determined by the HSD in writing, the Contractor shall provide the HSD with a response indicating the status of each of the exceptions or findings in the said audit report. If either the exceptions or findings in the audit are not resolved within thirty (30) days, the HSD has the right to reduce funding, terminate this GSA, and/or recommend decertification in compliance with state and/or federal regulations governing such action.

E. This audit shall contain a report of financial expenditures by category for each program to facilitate ease of reconciliation by the HSD. This audit shall also include a schedule of depreciation for all property or equipment with a purchase price of \$5,000 or more pursuant to OMB Circulars A-21, A-87, A-110, A-122 and A-133 where appropriate.

F. This audit shall include a report on compliance with requirements applicable to each major program and internal control over compliance in accordance with OMB Circulars A-21, A-87, A-110, A-122 and A-133 where appropriate.

**13. Invalid Term or Condition**

If any term or condition of this GSA shall be held invalid or unenforceable, the remainder of this GSA shall not be affected and shall be valid and enforceable.

**14. Enforcement of Agreement**

A party's failure to require strict performance of any provision of this GSA shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this GSA shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**15. Notices**

Any notice required to be given to either party by this GSA shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To HSD:

Coy Maienza, Program Manager/Clinical Director  
Behavioral Health Services Division  
Human Services Department  
P.O. Box 2348  
Santa Fe, N.M. 87504-2348  
Coy.Maienza@state.nm.us

To Contractor:

Roberta Martinez  
Children, Youth and Families Department  
Family Services Division  
PERA Building  
P.O. Drawer 5160  
Santa Fe, NM 87502-5160  
[roberta.martinez@state.nm.us](mailto:roberta.martinez@state.nm.us)

**16. Debarment and Suspension**

A. Consistent with either 7 C.F.R. Part 3017 or 45 C.F.R. Part 76, as applicable, and as a separate and independent requirement of this GSA the Contractor certifies by signing this GSA, that it and its principals, to the best of its knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal department or agency; (2) have not, within a three-year period preceding the effective date of this GSA, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (3) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (federal, State or local) with, commission of any of the offenses enumerated above in this Paragraph A; (4) have not, within a three-year period preceding the effective date of this GSA, had one or more public agreements or transactions (federal, state or local) terminated for cause or default; and (5) have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.

B. The Contractor's certification in Paragraph A, above, is a material representation of fact upon which the HSD relied when this GSA was entered into by the parties. The Contractor's certification in Paragraph A, above, shall be a continuing term or condition of this GSA. As such at all times during the performance of this GSA, the Contractor must be capable of making the certification required in Paragraph A, above, as if on the date of making such new certification the Contractor was then executing this GSA for the first time. Accordingly, the following requirements shall be read so as to apply to the original certification of the Contractor in Paragraph A, above, or to any new certification the Contractor is required to be capable of making as stated in the preceding sentence:

(1) The Contractor shall provide immediate written notice to the HSD's Program Manager if, at any time during the term of this GSA, the Contractor learns that its certification in Paragraph A, above, was erroneous on the effective date of this GSA or has become erroneous by reason of new or changed circumstances.

(2) If it is later determined that the Contractor's certification in Paragraph A, above, was erroneous on the effective date of this GSA or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to the HSD, the HSD may terminate the GSA.

C. As required by statute, regulation or requirement of this contract, and as contained in Paragraph A, above, the Contractor shall require each proposed first-tier sub-contractor whose subcontract will equal or exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the sub-contractor, or its principals, is or is not debarred, suspended, or proposed for debarment by any federal department or agency. The Contractor shall make such disclosures available to the HSD when it requests sub-contractor approval from the HSD. If the sub-contractor, or its principals, is debarred, suspended, or proposed for debarment by any federal, state or local department or agency, the HSD may refuse to approve the use of the sub-contractor.

17. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions

A. The applicable definitions and exceptions to prohibited conduct and disclosures contained in 31 U.S.C. § 1352 and 45 C.F.R. Part 93, are hereby incorporated by reference in subparagraph (B) of this certification.

B. The Contractor, by executing this GSA, certifies to the best of its knowledge and belief that:

(1) No federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan, or cooperative agreement; and

(2) If any funds other than federal appropriated funds (including profit or fee received under a covered federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contract Manager.

C. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

D. This certification is a material representation of fact upon which reliance is placed when this GSA is made and entered into. Submission of this certification is a prerequisite for making and entering into this GSA imposed under 31 U.S.C. § 1352. Any person who makes an expenditure prohibited by § 1352 shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

**18. Findings and Sanctions**

A. The Contractor agrees to be subject to the findings and sanctions assessed as a result of the Agency audits, federal audits, and disallowances of the services provided pursuant to this GSA and the administration thereof.

B. The Contractor will make repayment of any funds expended by the Agency subject to the jurisdiction and authority of which an auditor finds were expended, or to which one of both of the federal funding agencies, United States Department of Health and Human Services (DHHS) takes exception and requests reimbursement through a disallowance or deferral is based upon the acts or omissions of the Contractor which violate applicable federal statutes and/or regulations, subject to sufficient appropriations of the NM Legislature.

C. If the Agency becomes aware of circumstances that might jeopardize continued federal funding, the situation shall be reviewed and reconciled by a mutually agreed upon panel of Contractor and the Agency officials. If reconciliation is not possible, both parties shall present their view to the Director of the Administrative Services Division who shall determine whether continued payment shall be made.

**19. Entire GSA**

This GSA incorporates all agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written GSA. No prior agreements or understandings of the parties or their agents, verbal or otherwise, are valid or enforceable unless embodied in this GSA.

**20. Miscellaneous**

A. This GSA is an internal government agreement and is not intended to confer any right upon any private person.

B. Neither party will be responsible for liability incurred as a result of the other party's acts or omissions in conjunction with the GSA. Any Liability incurred in connection with the GSA is subject to the immunities and limitations of the New Mexico Tort Claims Act 41-4-1 et seq., NMSA 1978 as amended.

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IN WITNESS WHEREOF, the parties execute this GSA as set forth below:  
STATE OF NEW MEXICO:

By: Sidney Squier  
Cabinet Secretary  
Human Services Department

Date: 6/15/13

By: Dee Squier  
Chief Financial Officer  
Human Services Department

Date: 6/18/13

Approved as to form and legal sufficiency:

By: Staben  
Office of General Counsel  
Human Services Department

Date: 6/18/13

Governing Official:

By: Yolanda Dejes  
Cabinet Secretary

Date: 6/10/13

Approved as to Form and Legal Sufficiency:

By: W. Johnson  
Office of General Counsel

Date: 6-10-13

**EXHIBIT A**  
**STATEMENT OF WORK**

The CYFD agrees to be subject to the findings and sanctions assessed as a result of HSD audits, federal audits, and disallowances of the services provided pursuant to this GSA and the administration thereof subject to availability of sufficient funding.

1. Certify and report upon the CYFD State General Fund (GF) expenditures to count toward the State of New Mexico CYFD Domestic Violence programs.
2. Collaborate with the HSD and participate in selected random program and fiscal reviews of any sub-contracted service relative to this GSA.
3. Comply with all federal and state laws and regulations relating to the uses and expenditures of the funds transferred or disbursed, to the CYFD under this GSA.
  - a. HSD/ Behavioral Health Services Division (BHSD) signatures are required to provide written approval of all subcontracts in accordance with Section 7 of the GSA;
  - b. Manage all subcontracts (if any) through program reviews, audits, and reporting;
  - c. Submit invoices and program reports to the HSD/BHSD in accordance with the terms of the GSA; Provide the HSD/BHSD copies of any and all subcontracts originating under this GSA upon request; Provide the HSD/BHSD copies of any review and/or audit schedule originating under this GSA so that the HSD/BHSD may participate; and
  - d. Ensure that the funding under this GSA not utilized for duplicative services already available to low-income populations
4. Shall provide Behavioral Health Services Division (BHSD) with quarterly reports describing scope of work, naming the specific providers doing the work and the amount each provider received. Quarterly reports are due on the 15<sup>th</sup> of the month following the quarter. Reports will be sent to Coy Maienza: Coy.Maienza@state.nm.us. Ms. Maienza can be reached telephonically at: 505.476.9263.